IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Application No.6269 of 2005

State of Maharashtra Applicant

Vs.

Jaya Nemu Shetty & anr. Respondents

Mrs.S.D.Shinde, APP for applicant-State.

Mrs.Aparna Shinde for resp.no.1.

CORAM: B.H.MARLAPALLE & R.S. MOHITE, JJ.

March 08, 2007.

P.C.

1. Heard Mrs.Shinde, the learned APP. This is an application filed by the State praying for leave to appeal under Section 378(3) of Cr.P.C. against the order of acquittal passed by the learned Judicial Magistrate First Class at Pune in RCC No.11 of 1990 on 30/4/2005.

2. The prosecution case was that the house property bearing House No.429, Budhwar Peth, Pune was purchased by the complainant in the year 1981. There

were some litigations between one Jaywant Fatale and lessees Pandya and Vankappa Sotheri and all these litigations were decided in favour of Jaywant Fatale and the complainant who was put in possession of the property on 20/10/1988. The property is of lodging. It appears on 14/11/1988 the complainant received information that somebody had locked the property and changed the name boards of the same. On that day at about 9 a.m. accused Jaya Shetty and some other persons came in a motor-car and Jaya Shetty threatened the complainant to kill him if he opened the lock. The offence was, therefore, registered under Sections 454, 457, 380, 467 and 506 read with Section 34 of IPC against the accused Jaya Shetty and Arvind Athawale.

3. The prosecution examined in all five witnesses, PW 5 being the complainant, PW 2 was a panch witness for the documents seized by the police and obtained specimen signatures of the complainant for sending to expert. PW 3 Narendra Porwal was the nephew of the complainant and PW 4 Vinubhai had stated that accused Jaya Shetty abused them and threatened them to kill if any of them tried to open the lock.

4. During the trial the decisions rendered in the pending Court cases were brought on record at Exhibits 37 to 40 and In RCS No. 285 of 1992 there was no specific finding that the documents were forged by the accused. On the other hand the only finding recorded was that the documents were not executed by the complainant. The evidence of the expert at Exhibit 70 only stated that the documents did not bear the signatures of the complainant. The evidence of PWs 1 to 4 regarding theft of movables and changing name boards by the accused was not a direct evidence. The muddemal property seized was not identified by the complainant as his property. The eye witness PW 3 did not support the complainant on the point of threat by the accused to complainant. On the other hand PW 4 Vinubhai admitted that he was on visiting terms with the complainant. It was under these circumstances that the learned Judge of the trial Court held that none of the charges could be proved beyond reasonable doubt by the prosecution and consequently passed the acquittal order on 30/4/2005.

5. Having given our anxious considerations to the submissions of Mrs. Shinde, the learned APP as well

as the reasoning set out by the learned Judge of the trial Court, we have no doubt that the order does not call for any reconsiderations by us.

6. Hence the application is rejected.

(R.S.MOHITE,J.) (B.H.MARLAPALLE,J.)